

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-11 are pending in the present application. No new matter has been added.

By way of summary, the Official Action presents the following issues, Claims 1, 2 and 4-6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hashizume et al. (U.S. 2003/0142955, hereinafter Hashizume) in view of Seo (U.S. Patent 6,798,980).

THE OFFICIAL ACTION OF OCTOBER 19, 2006  
HAS BEEN IMPROPERLY MADE FINAL

Concurrent with the filing a petition under 37 C.F.R. § 1.181 seeking withdrawal of the outstanding Final Rejection as premature,<sup>1</sup> Applicants provide the following discussion for facilitating supervisory review of the finality of the Official Action dated October 19, 2006 in accordance with MPEP § 706.07 (d).

The Final Action of October 19, 2006 in the section titled “Response to Arguments” asserted that:

Applicant’s arguments filed August 3, 2006 have been fully considered but they are not persuasive. Applicant argues on pages 2-3 that Hashizume et al (US 2003/0142955) does not have priority of current application as it claims priority to abandoned parent application 09/150,235. Please find enclosed the application 09/150,235 that establishes the priority of the Hashizume et al (US 2003/0142955) reference to September 10, 1998. The rejection is maintained.

The above noted response to Applicants’ arguments has mischaracterized the Applicants’ earlier submission. In the Applicants’ earlier response, Applicants noted that the Hashizume (CIP) reference cited by the Examiner is a continuation-in-part application. As such, there are aspects of the Hashizume (CIP) disclosure which are not entitled to the

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<sup>1</sup> See MPEP § 706.07 (c).

September 10, 1998 priority date. Furthermore, Applicants noted that the Hashizume parent filing was not previously available to Applicants as it was abandoned. Thus, Applicants were unable to determine whether or not the aspects of Hashizume cited by the Examiner in his rejection were entitled to the September 10, 1998 priority date. The simple provision of this parent application for the first time does not in and of itself **establish priority for the aspects of Hashizume parent cited by the Examiner.**

As can be appreciated, this is the **first time** the Applicants have had access to the Hashizume parent.

Applicants respectfully submit that the finality of the current Office Action is clearly premature. Simply stated, Applicants had no previous means by which to examine the Hashizume parent application absent the supply of this application from the USPTO.

Applicants respectfully submit that the finality of the Official Action dated October 19, 2006 is premature and should be withdrawn.

Respectfully submitted,  
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